



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: CCO - 175403

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on July 6, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Marathon County Department of Social Services regarding Child Care (CC), a hearing was held on October 11, 2016, by telephone from Madison, Wisconsin. The record was held open until October 25, 2016, in order to allow the parties to submit written closing statements.

The issue for determination is whether petitioner was overissued CC benefits due to a failure to report that her ex-husband lived with her during the period of February, 2015, through June, 2015.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

**Petitioner:**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Petitioner's Representative:**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Respondent:**

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, WI 53703

By: [REDACTED]  
Marathon County Department of Social Services  
400 E. Thomas Street  
Wausau, WI 54403

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.
2. Petitioner received CC for her minor child, VS, Jr, during at least the period of February, 2015, through June, 2015. In June of 2015, the county began an investigation concerning the residence of the child's father, VS. After the investigation the county concluded that the father (petitioner's ex-husband) lived with petitioner and their son at his [REDACTED] residence during the referenced time period. After obtaining his income information, the county informed petitioner by notice dated June 13, 2016, that she was overpaid \$598.17 in CC from February, 2015, through June, 2015, claim no. [REDACTED]
3. Petitioner was divorced in November 2014. The parties separated in August of 2013, following a domestic abuse incident. The petitioner had a domestic abuse injunction imposed on VS from August, 2013, through October, 2013. Petitioner reported her separation, and later her divorce, to the respondent.
4. VS, Jr, was enrolled in daycare in [REDACTED] until some time in late 2014, at which time VS, Jr, was enrolled in daycare in [REDACTED]. Since [REDACTED] is located approximately one hour from [REDACTED], petitioner would spend the night at her former in-law's home occasionally. On those occasions, she would drop off her son with VS in the morning, and VS would take him to daycare at noon. Petitioner would then pick him up at 6:00 pm.
5. At all times relevant hereto, petitioner resided in a home owned by her parents located in [REDACTED], Wisconsin, and worked in [REDACTED]; VS has resided at a residence owned by his mother (she does not reside there) in [REDACTED], and since 2005, VS has been employed by [REDACTED]. The [REDACTED] has locations in [REDACTED] Wisconsin, and [REDACTED], Wisconsin.

### **DISCUSSION**

Wis. Stat., §49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). Recovery of child care overpayments also is mandated in the Wis. Admin. Code, §DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Admin. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

A parent is eligible for child care services if she needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat., §49.155(1m)(a); Child Day Care Manual, §§1.4.8 and 1.5.0. If both parents are in the household both must be working or attending W-2 activities. Wis. Admin. Code, §DCF 101.26(1).

A child care assistance group must include the following who live in a household: parents of a child, the child, and siblings of the child. Wisconsin Shares Child Care Assistance Manual, §1.3.9. In addition the

Manual, at §1.2.0, defines “Two Parent Households” as those consisting of either married parents or non-married co-parents. There is no clearly stated definition of when parents are living together when they claim they are not. However, I have been conducting hearings on the issue for several years, and there are some regular indications.

One is that the father uses the mother’s address, often even after she moved to a different address. Another is that the father has no separate, verifiable address, but instead is alleged to stay with friends or relatives (which is difficult for the agency to verify). A third is that neighbors and/or the landlord believe that the father lives in the home. A fourth is that the father is at the residence when the investigator appears. A fifth is that, after realizing that she is being investigated, the mother reports to the agency that the couple reconciled and the father moved back in. A sixth is that the father loses his source of income, and then the couple reconciles. A seventh is that the mother obfuscates with the child support agency about the father’s whereabouts.

Of these commonly seen indicators, only the third appears here. The respondent asserts that it commenced its investigation after questioning petitioner’s commute to [REDACTED] (a one hour drive from [REDACTED] each way) for daycare. An investigation was performed by KK of O’Brien and Associates. He testified that two of VS, Jr’s daycare workers, as well as VS’s neighbor confirmed that petitioner and VS live together in [REDACTED]. KK’s investigative report included vehicle registration information that indicated that petitioner’s vehicle is registered at her [REDACTED] address, and VS’s vehicles are registered under his [REDACTED] address.

The respondent also presented testimony from VS, Jr’s daycare providers. BH, administrator of the daycare, testified that she told KK that petitioner and VS resided in [REDACTED], but on cross examination conceded that she could not provide specific dates that she saw petitioner and VS as VS’s home, but added that she saw them regularly. The other daycare worker, AS, testified that she was petitioner’s car parked at VS’s home at least once per week.

VS’s neighbor, who purportedly stated that petitioner and VS had lived together for two years was not called as a witness. The Wisconsin Supreme Court has held that uncorroborated hearsay does not constitute substantial evidence upon which to base a finding of fact. *Gehin v. Wisconsin Group Ins. Bd.*, 2005 WI 16, ¶¶ 53-56 & 58, 278 Wis. 2d 111, 692 N.W.2d 572; See also, *Williams v. Housing Auth. of City of Milwaukee*, 2010 WI App 14, ¶¶ 14 & 19, 323 Wis. 2d 179, 187 & 189, 779 N.W.2d 185 (“[u]ncorroborated hearsay evidence, even if admissible, does not by itself constitute substantial evidence.”). In these circumstances the Wisconsin Supreme Court has held that hearsay must be corroborated by nonhearsay evidence. *Gehin*, ¶¶ 82 & 92. An ALJ does not have discretion to disregard it. Arguably, the hearsay evidence of VS’s neighbor could be construed to be corroborated by VS, Jr’s daycare providers. However, I find the testimony by BH and AS to be weak at best, and neither of them testified to the length of time or even a specific time period during which petitioner was allegedly residing with VS.

Petitioner presented testimony of her mother, who stated that petitioner and her son reside in [REDACTED], and rent the lower level of her residence from her. She confirmed that VS resided there as well, until the August, 2013, domestic abuse incident. Petitioner testified that she and VS moved to her mother’s home in 2009, when they lost their home to foreclosure. She stated that her inconvenient daycare situation is the result of attempts by her and VS to successfully co-parent their child. VS, Jr, was attending daycare in Wausau, but that ended when petitioner lost her job. She stated that her mother watched her child for a while, but she needed to find a new daycare when her mother obtained new employment. When she had difficulty locating a daycare near her residence, she decided to enroll her son in daycare in [REDACTED].

While I can understand that respondent questioning the living situation in light of the distances involved here, I cannot conclude that the determination that petitioner and VS resided together from February, 2015, though June, 2015, is correct. The evidence presented by the respondent presents more questions than it answers, and I found petitioner's testimony to be both credible and consistent. Petitioner's mailing address identified the [REDACTED] address and VS's mailing address identified the [REDACTED] address throughout the overpayment period. This is noted in the respondent's own records, as well as records obtained from the Department of Motor Vehicles and Marathon Circuit Court. The portions of the investigative report evidence that are not hearsay do not establish anything more than the fact that petitioner is often at the home of VS. Neither of the interviewed daycare workers testified that they were ever in VS's home; only that they saw petitioner at VS's home, walking the dogs, or parking her vehicle there. This partially corroborates petitioner's testimony that she and VS were attempting to coparent their child, and that she would occasionally stay at her in-law's home and drop her son at VS's home in the morning. Based upon the record before me, I am unable to conclude that the respondent has established by a preponderance of the evidence, that petitioner and VS resided together between February, 2015 and June, 2015.

### **CONCLUSIONS OF LAW**

The respondent has not established by a preponderance of the evidence, that petitioner and VS resided together between February, 2015 and June, 2015. As such, the respondent has not established that petitioner was overissued CC benefits during said time period.

**THEREFORE, it is**

### **ORDERED**

That this matter shall be remanded to the respondent to rescind overpayment claim no. [REDACTED], in the amount of \$598.17, within 10 days following issuance of this decision.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

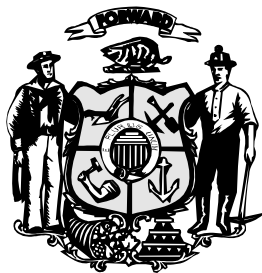
### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 26th day of October, 2016

\s \_\_\_\_\_  
Peter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on October 26, 2016.

Marathon County Department of Social Services  
Public Assistance Collection Unit  
Child Care Fraud

Attorney [REDACTED]

Attorney [REDACTED]